

East Longmeadow Planning Board

60 Center Square

East Longmeadow, Massachusetts 01028

since 1894

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Michael Carabetta, chair

Alessandro Meccia, vice-chair

Tyde Richards, clerk

George Kingston

Ralph Page

robyn d. macdonald, director

Minutes of July 1, 2014

Present were: Chair, Michael Carabetta; Vice Chair, Alessandro Meccia, George Kingston and Ralph Page. Tyde Richards was not present.

Ray Casella re: St. Paul's Church

Mr. Carabetta said that there is correspondence that need to be read into the record.

Mr. Meccia read a letter from Peter Morton, 6 Athens Street regarding St. Paul's Church Planting Plan & Drainage Swale and Mr. Morton also submitted photos with his letter as follows:

July 1 2014 Town Meeting

Re: St. Paul's Church — Dwight Rd
Planting Plan & Drainage Swale

Questions for the architect:

What is the reason there is a drain located on some of the plans in the northeast corner of the building? What was the design intent of locating it there?

Why are there only notes that correspond to Test Hole Type 1 and not the others? According to the town engineer, the verbiage in the notes for Test Hole Type 1 are noted incorrectly, how was that not noted and revised by the architect? I was told by the town engineer that all engineering values/results are the direct responsibility of the project engineer.

Knowing that 1 of the topics of this meeting was to discuss the swale, shouldn't the project engineer be in attendance, or is the architect the qualified person that will take responsibility to answer engineering questions? If the architect is unable or unqualified to respond please have the project engineer respond to the question? And please have somebody from the planning board follow up with me asap via email pmgolf2112@yahoo.com.

There is a saddle in the middle of the swale and there are also sedimentation and erosion control locations in the general area of where the proposed drain

would be located in the north east corner of the building/lot. Will there be corrective action taken to repair this? What date will these repairs be made? In closing I wanted to thank Robyn and her assistant for their patience, professionalism, and genuine dedication to a tax payer like myself that is unfamiliar with having to work through a situation such as this. I understand and respect what all our town officials sacrifice for the betterment of our community. The one most troubling aspect regarding this entire process is the lack of communication from Mr. Carabetta, I sent multiple emails and made several calls to him, and the only time he followed up with me was when I called into Robyn and voiced my concern about the lack of communication from him. Why did I keep calling? It was because I was not getting any follow up. In that phone call Mr. Carabetta proceeded to tell me that I did not need to call and "bother" the girls in the office. Is that how longstanding taxpayers are perceived of by all of the planning board?

I know we all have professional and personal life balances to manage and we can all become frustrated. But to be told that I was a bother and that I shouldn't call to voice my frustrations by a public official could be considered intimidating by many.

Mr. Carabetta asked Raymond Casella, Architect for the project if he was aware of the issues.

Raymond Casella said he has not seen that letter and said the only correspondence he received from Ms. Macdonald was that there was some discussion about plants and other issues. Ms. Macdonald said that Mr. Morton had brought that in that day. Mr. Casella said that he is unaware of what is in that letter and asked if Mr. Morton is an abutter.

Mr. Carabetta said that he believes he is an abutter. Mr. Casella said that he would be more than happy to go over those issues. Mr. Carabetta said that he made a site visit with one of the Selectmen and there are a couple issues with standing water in the northeast corner that Mr. Morton is talking about. He said also there are supposed to be arborvitaes planted and people are going into the woods and digging up white pines and planting them in place of the arborvitaes.

Mr. Casella said that they are not in place of them he said Father on his own decided to rescue some plants and planted them there and it has nothing to do with the contract or the contractor. He said that no one knows exactly why he did it he just felt like those plants needed to be saved and stuck them there and the Farther knows they will have to be taken down when the row of arborvitaes are put in. Mr. Carabetta said he can see why the neighbors are concerned they are being told one thing and see another thing. Mr. Casella said that the work will be completed per the approved plans and there is no intent to deviate from those plans. He said that there is water that stands in back of the building that is part of the overall drainage plan that was approved and done by Gary Swanson. Mr. Casella said that is a swale that stands in the back and they cannot put more water into the public system because Massachusetts dictates how much water can go in at what rate. He said the amount of water they fed to the system had to be net zero with the new addition and there is provision on site for the water to stay on site then go in. Mr. Casella said when there are heavy rains and without the grass in place and no plantings in to absorb any water temporarily there will be water standing occasionally.

Mr. Carabetta said that he and Selectman Bill Gorman, Board of Health went out there with the plan and it does show a foot to foot & half of retention. He said that he thinks Mr. Gorman has been in touch with Mr. Morton and is not sure if he has explained that to him or not. Mr. Carabetta said that he knows they have tried to do more to try and remedy the situation and he knows it is a process under construction but the Board just wanted him to hear the neighbors concerns. Mr. Casella said that there is now parking draining all the way in the back that was not in place when the photo was taken nor was the very large underground water storage stone bed that is underneath the pervious payment. He said in the interim the gutter was turned back towards the side to direct water towards the previous water storage and he said when there is extreme rain with no grass and no plantings the velocity with which the water travels will get there faster. Mr. Casella said the water that always went towards the city in the storm water system is still matched at 100% of what it was before and zero more from the site.

Mr. Carabetta addressed the Board for any further questions for Mr. Casella.

Mr. Kingston said that he thinks Mr. Casella reiterated that it will be re-graded and seeded which should take care of any irregularities in the bottom. He said the purpose of it is temporary storage of water during heavy rain events and assuming it drains in a reasonable period of time it should not present a mosquito issue because as it drains the mosquito larvae will go away.

Mr. Page asked how long is the water staying in. Mr. Casella said that it will depend on rain flow but what they have seen is usually within 2 days it is completely dried at the bottom. He said what the engineer originally calculated was on the 100 year storm and somewhere in their files there is exact calculation on how much water was exactly in there and if they need those calculations he could ask Mr. Swanson for that information.

Mr. Meccia asked Mr. Casella when the arborvitaes will be planted. Mr. Casella said that he was told that their financing is present for that and that they are looking at different contractors to get a price as they finish up the site. He said that he doesn't know exactly when Father intends to plants but as soon as the weather becomes more appropriate and it will be within the parameters of when they said it will be done.

Mr. Page suggested that they put mosquito pucks in the standing water to make sure there are no mosquitos or mosquito larvae. Mr. Casella said that it would be in the best interest of both parties and said that was a wise suggestion that he thinks they would be happy to entertain.

The Board thanked Mr. Casella for his time and agreed to send Mr. Morton a letter with regard to his concerns and the outcome of their discussion with Mr. Casella.

Mr. Carabetta addressed the audience for any questions.

Chris Bertellie, 2 Athens Street said that he was present about a year ago and the plantings were supposed to be installed in the Spring or as soon as possible. He said now it is the summer and they are saying when it gets cooler they will plant and asked if they are now looking at the end of summer. Mr. Casella said yes they are looking at towards the end of Summer because earlier this year the site was not prepared because the driveways were not complete due to the later cold weather and they

weren't able to get the paving finished and they were unable to get the stone in. He said that it's definitely not a delay for any other reason then the weather pushing the construction schedule of the outside site work later on into the year. Mr. Casella said that they have a prohibition against using any frozen material or using material on site so that pushed the start for the exterior site work further. He said that the trees will be in as soon as the Father gets the okay from the company planting the trees which means at the earliest convenience of the installer they will be in. Mr. Bertellie said that he spoke with John Wynn on June 2nd and he said that they would be in within 30 days and said that tomorrow is 30 days and he keeps getting different times. Mr. Casella said that John Wynn is the Chairman of the Building Committee and is the person that would know. He said that he thinks Mr. Wynn's intent was to have them in as soon as possible but the gentlemen that do the installing of the trees are saying that the weather is not ideal for planting. Mr. Casella said that the Father told them that they are the experts and to put them in at their earliest convenience.

Ryan Labonte, 165 Braeburn Road said that his issue with the swale is that they said that standing water would only be standing at 2 days tops. He said that all the abutters know that the water sat there for several times throughout the past 2 months for 6 days and caused so many mosquitos for the abutters that they couldn't even go outside. Mr. Labonte said that he doesn't know where the 2 days came from and asked what can they do about it because it is not true. He said that he doesn't know what the issue is with the swale because it should not be sitting there that long and where the dumpster is over to the other side of the parking lot crushed rock was put down and there are no water issues there what so ever. Mr. Labonte said where the dumpster is towards Mr. Bertellie's property in the corner by the building was supposed to be crushed rock for the drainage.

Mr. Casella said that there was never the intention of putting crushed rock because all that does is give it more void and it has to seep into the ground. He said whether it sits in the rock or sits in the ground is about the same and the crushed rock that is under the parking lot is to absorb the water that is being dumped directly on to the parking lot so there was never going to be stone in the back. Mr. Casella said the swale in the back was a place to park the water temporarily and what they are looking at is a job that is not finished, the plantings aren't in, the grass is not in and it runs much quicker on dirt versus running through grass. Mr. Casella suggested as the project gets closer to finish they will take a look at again but the bottom line is that the water that is there is the water that always been there on the site so there really is not anywhere else to put it simply because there is no where else to go with it.

Mr. Labonte said when they first started to extend the parking lot they dug a huge trench with the crushed stone and there are no issues what so ever because the water goes into the rocks and seeps into ground. He said in the other corner it is just dirt and grass and is just sitting there.

Mr. Casella said that the surface flow of water is stored in the opposite corner behind the building and that was the original drain swale lowest position. He said the other positions are higher so if there is water running off the properties in the back which would be the abutters it would all naturally run down to that corner because that is the low spot. Mr. Casella said the stone storage water is for the water that is coming off the roof and also from the diverted rain leaders off of the building. He said that his percentage of water that he sees standing there is the smallest percentage of the water on the site but there is still water that will always be back there because the project is not complete yet so the final analysis can't be determined.

Mr. Carabetta said that the Board has a plan showing the retention swale if anyone would like to take a look at it. He said that there is about a foot & half elevation difference in that corner and about 30 to 40 feet in length. Mr. Carabetta said that it is meant to retain some of that water and there will be standing water during heavy rains and was presented by their architect and approved by the DPW and the Planning Board. He said it is available if anyone wants to take another look at it and said that they have done everything the Board has asked of them and they still have more to go.

Mr. Labonte asked if they could get some sort of e-mail so they are in loop when the landscaping will be finished. Mr. Carabetta said that they can certainly do that once they get a definitive from them.

Adam Hession, 161 Braeburn Road said that he is happy to hear that the arborvitaes are still going in. He said that he wanted to confirm what Mr. Labonte said that the water does stay standing longer than 2 days and caused serious problem with mosquitoes. Mr. Hession asked where the church property meets his property there used to be a silt screen and on the church side of the silt screen it is all overgrown with weeds and asked if they will be clearing that out. Mr. Casella said when the contractor pulls up the silt screen they are supposed to clear it, grade it flat and grass planted where the church owns. He said if that is not done that they will take a look at that and said that they won't go onto his property because it is private property. Mr. Hession said also that he thought at one of the meetings the church had said that they wouldn't be having DJ's or parties there. He said that past Friday night there seemed to be a party there with a DJ and speakers.

Mr. Carabetta said that they weren't aware of that and asked Mr. Casella if he could answer that question.

Mr. Casella said that he didn't have answer for that and was unaware of it and will look into it. Ms. Macdonald said if Mr. Casella gives her the Father's number that she could contact him and give him the agreement. Mr. Casella said sure that he would give her the Father's contact information.

Alex Grisau, 169 Braeburn Road asked if the landscaping plan in place is strictly for arborvitaes or are there intermittent taller trees proposed. Mr. Meccia said from what he understands the landscaping plan are green giants and they tend to grow very fast approximately 2 to 3 feet a year. Mr. Grisau said his concern is with no tree barrier the wind comes across the parking lot and it is destroying the back of his house back of his house, there is sand in his window sills about quarter inch thick and said that the arborvitaes aren't going to grow 40 feet. Mr. Page said yes they will grow 30 to 40 feet in height when they are full grown on average 1 to 2 feet per year. He said that was one of their main concerns to plant something that will grow large and tall and in a short period of time. Mr. Grisau asked if the grade will be changed once the trees are planted. Mr. Casella said the grade that is there is pretty close to final and when they put in the plantings or the trees they will reshape around the base. Their intent is to keep it as gentle of a slope as they can.

Mr. Hession asked if there is a deadline for plantings. Mr. Carabetta said that is what they are working on and they are telling them by fall. Mr. Casella added that the plantings will be put in as soon as the weather permits them to live.

Mallory Labonte, 165 Braeburn Road said when the were there about a year ago there some talk about a fence and asked if that was something they are still thinking about. Mr. Casella said that he knows the Father was considering a fence but there wasn't a fence on the original final plan and he is

still tossing that around. He said that he has not asked them to put a fence in and if he decides to do it on his own afterwards that will be his decision.

Mr. Carabetta thanked Mr. Casella for coming in and answering everyone's questions.

Request for Signage – P3 Auto Detailing & Car Wash, 50 Maple Street

Acting Clerk, Alessandro Meccia read a Request for Signage from Andre Yarns, Jr., P3 Auto Detailing & Car Wash, 50 Maple Street.

Upon motion duly made by George Kingston and seconded by Alessandro Meccia, the Board voted unanimously 4-0 to approve the proposed building sign for P³ Auto Detailing and Hand Car Wash, 50 Maple Street for a total of 96 square feet to be placed on the building as shown on the sign rendering submitted by the applicant and conditioned upon obtaining a sign permit from the Building Inspector.

Rick Granger regarding Canterbury Circle

Mr. Carabetta said that there are some issues with a foundation put in on Canterbury Circle and the plot plan doesn't match the plan they submitted for subdivision control. He said that there is no building permit that has been issued and now they want to back fill. Mr. Carabetta asked Mr. Granger to explain to the Board how they got there.

Mr. Granger said that they have the original subdivision with the building setbacks and when they went to have the plot plan drawn up Mike Smith thought that the side yard & rear yard ones were not accurate. He said Mike Smith then prepared a new plan showing how he thought the accurate setbacks were and he took that to the Building Inspector and showed him that versus the subdivision one. Mr. Granger said that the Building Inspector agreed with Mike that the one they submitted with the building permit was the accurate one. Mr. Carabetta said that he thinks that is where the problem arises because they approved the subdivision on what was provided to them with the building envelopes in that subdivision. He said that the 45 feet does not meet the setback and he is trying to understand how that happened. Mr. Granger said that they took the plan to the Building Inspector and showed him the plan and he agreed that the setbacks were accurate. He said that he didn't know that they had to go back to the Planning Board and he thinks that is the problem.

Ms. Macdonald explained what Mr. Hellyer has determined is that is considered a side yard and side yard requirement is 20 feet. She said that he told Mr. Granger that he is considering that a side yard.

Mr. Page asked being a definitive subdivision with definitive drawings on it if the building envelope changed shouldn't they have received a change in plan so that the Board could look at it and vote on amendment to it. Mr. Granger said in hindsight for sure but he thought when he talked to the building official that was where they needed to go which was wrong on his part. Mr. Carabetta said even though it was brought up by the director that it was wrong and there is still no building permit. Mr. Granger said right they haven't issued the building permit and said shame on him no doubt about it but they always submit the application and then the building permit is mailed to their office.

Mr. Carabetta asked how long ago did they put the application in. Ms. Macdonald said June 4th. Mr. Carabetta said roughly 2 weeks and no permit. Mr. Kingston added that he has difficulty seeing how

that's the side yard since the building faces on the road and that is definitely on the side of the house that is opposite the road. He said that he thinks if the building permit had been issued that the Board might appeal that ruling and since they were notified of that ruling by the Building Inspector there was no way to ever know that he made such a ruling unless they were told by the applicant which wasn't until that evening.

Mr. Kingston said therein lies the problem as well if the Board is unaware of decisions being made they have no ability to appeal them if they disagree. Mr. Carabetta said that he had a meeting with Mr. Gorman, the Building Inspector and the State Inspector the other day and they tried telling him that the Building Inspector has the authority to issue permits as he sees fits. He said that he understands but they have a Muins System and they have checks and balances and the reason they have all that is so things such as the issue before them that evening don't happen.

Selectmen William Gorman asked Mr. Carabetta why he was brought into the meeting at the last minute because he knows nothing about it what that man is talking about. He said what he should have done was because you people can't get along with the Building Inspector because he was sitting there with the State Inspector and with him and the electrical inspector and he knows what he told you. Mr. Carabetta said he does. Mr. Gorman said but he doesn't want to listen and said that they think they can do what they want and he told you right in front of him that the buck stops with Mr. Hellyer so he thinks they should have had Mr. Hellyer at the meeting that evening instead of trying to rope him in and suck him into it. Mr. Carabetta said that he wasn't trying to rope him. Mr. Gorman said that was exactly what he did and he is supposed to be running the Board because he is the Chairman and said that he is not doing his job. He said that he is not putting up with this stuff and Dan Hellyer works for him and he is his boss and if Dan Hellyer is not doing his job he'll fire him. He said that he would make sure some of Board members get fired too for over stepping their bounds because he heard what the state guy said. If you don't not do what you are told in 30 days he is going to bring the town to court and asked Mr. Carabetta if he heard that. Mr. Carabetta said that he did hear that. Mr. Gorman said that it seemed to go right over his head. Mr. Carabetta said no that he went and looked at the town's by-laws and in the town's by-laws says residents under Special Permits and/or businesses have to go back to the Planning Board for amendments and he was told what permits that Ms. Macdonald was holding up. Mr. Gorman said the trouble is that they can't get along, they don't want to get along and they want to continue their bull crap fighting all the time. He said and it isn't going to happen while he is a Selectmen. Mr. Gorman said that they are either going to work it out with him or he is going higher and bring people in to get it straightened out or the Board will be gone, period. He said that he is telling them straight right to their face right on camera because he is sick of putting guys like this putting them through baloney because they don't want to get along with the Building Inspector because they want to over step their bounds all the time. Mr. Carabetta asked how they are over stepping their bounds. Mr. Gorman said just by what they are doing and asked why they didn't have the Building Inspector there that evening. Mr. Carabetta said because he figured he would have him there instead. Mr. Gorman asked why he had him there because he doesn't know swat about what they are even talking about. Mr. Carabetta said that was why he was hoping to have him there so that he could explain it to him. Mr. Gorman said no what he should had done was instead of roping him and try to suck him in that he should have given him the plans so he could have looked them over and done some homework on them and he could have come to the meeting with a little broader mind. He said to Mr. Carabetta don't you ever suck me in again because he is not taking his crap or he is not taking any of the Board's crap and said do you understand what he is telling him and that goes for all of them.

Mr. Kingston said Mr. Gorman. Mr. Gorman said never mind they are not sucking him them in anymore and they need to do things the right way. He said they should have presented it to him a long time ago or when they received it and gave him time to look it over. Mr. Carabetta said that he just found out about it yesterday. Mr. Gorman said that they tried to suck him in and they are not going to do it. He said put that on the camera and let the people at home see that and said to Mr. Granger that he was sorry that he had to go through that. He told Mr. Granger to go and see him and the Building Inspector and they will get it straightened out. Mr. Kingston thanked Mr. Gorman for his comments. Mr. Gorman said that's okay Mr. Kingston and thanks for his comment and he is nothing but a wise guy. Mr. Kingston thanked him for his insults as well. Mr. Gorman said that they act like a bunch of 2 year olds on the committee, a bunch of 2 year olds.

Mr. Carabetta told Attorney Donahue (who was present for another issue) that he did meet with the State Building Inspector who told him that they can do whatever they want, Munis System doesn't matter and Mr. Hellyer has sole discretion completely. He said as he looked through the towns' by-laws and Special Permits and Subdivisions are things such that have to go before the Planning Board, before the DPW, before the Assessors and that is why they have the Munis System checks and balances. Attorney Donahue said that he can't respond to generalities and as far as specific situations he can address them and with respect to generalities the relationship with Special Permits State Law. He said for them to give him the specific facts and he will deal with it.

Mr. Page said that they have a definitive subdivision plan that was approved by the Planning Board and there is a building envelope that is shown on the plan. Mr. Page said that the builder has now put up a foundation outside of the building envelope and it was his understanding if anything was to be changed on the plan that they needed to come back in front of the Planning Board with that change. Attorney Donahue asked if it was there understanding or is a requirement of Planning. Mr. Carabetta said that he thinks it is written in the by-laws. Mr. Page continued to say that an amendment needed to be done to change it. Attorney Donahue asked if they are saying there was change in the location or there was a mistake in the location of the building.

Mr. Carabetta said that was the original building envelope that was proposed. Attorney Donahue said that he understands that but there are two questions, one being was it built outside of the plan intentionally or secondly was it placed in there in some type of error. He said if it was intentional perhaps it should have come back or if it was in error how would they know until someone determined that it didn't comply with the plan. Mr. Page said that he would have to say it was intentional because a new plan was given to the Building Inspector with new building envelope. Attorney Donahue said it was a new building envelope not just the location of the building outside of the envelope on the plan. Mr. Carabetta said correct. Mr. Page said yet it never came back in front of the Board for the Board's approval on it and it was submitted to the Building Inspector and it went from there. Attorney Donahue asked what the issue was before the Board that evening. Mr. Carabetta said that it doesn't meet the minimum required rear setback and the foundation is already in and there is no permit.

Attorney Donahue asked why was in front of the Board that evening. Mr. Page said because he had a problem with the changing of the building envelope without the Board's approval. Attorney Donahue asked if the Board voted it back for review?

Mr. Carabetta asked if the Board approved a subdivision isn't that what they are supposed to stick with? Attorney Donahue said that he needs to understand what it is that is before the Board that

evening and why it is there. He said if it is just to ask questions what happened, fine they can do that or if it's to correct the situation because it's wrong there are processes to follow.

Mr. Kingston said in his opinion it is before them because the Board is looking for a path forward. He said the applicant in this case has started a house and there is a difference of opinion between the Planning Board and the Building Commissioner as to whether or not the rear yard setback is a rear yard or a side yard. Mr. Kingston said that it's his understanding if a building permit is issued it is appealable under State Law and asked Attorney Donahue if that was correct. Attorney Donahue said yes it is the decision of the Building Commissioner and it's appealable and any structure that is constructed within 6 years is also appealable if it's not constructed in conformity with the existing zoning requirements but conforms to a plan that was submitted to the Building Commissioner. He said after 6 years it is only appealable if the building as built doesn't conform to the plan that was submitted to the building department. Mr. Kingston said exactly there is a difference of opinion between the Planning Board and the Building Commissioner as to whether or not it is a side yard or backyard. He said that it seems like the Board's route forward if they want to insist on the 50 feet in that direction would be to appeal the Building Commissioner's decision to the Zoning Board of Appeals. Attorney Donahue asked how long ago was the building permit issued. Mr. Kingston said that it has not been issued and a plan has been submitted. Attorney Donahue asked how can they appeal a decision of the Building Inspector that hasn't been made yet. Mr. Kingston said that is the point and the applicant is relying on a verbal assurance from the Building Commissioner as to what the decision will be. Attorney Donahue said that the rules are pretty clear if someone is going to put in a foundation they need a permit. He said that he doesn't know how building construction has started where there is no permit issued and if there is a builder doing it he would expect that he understands the rules of the state requirement as to what someone does when they start construction. Attorney Donahue said perhaps the question is why there is construction going forward without a permit being issued.

Mr. Carabetta said that was what he was trying to ask Mr. Gorman and he doesn't think he understood that.

Mr. Page said at this time he doesn't think there is anything to appeal because a building permit has not been issued. Attorney Donahue said that the proper action would be to request enforcement by the Building Commissioner to bring the lot into compliance by having the structure that has been started without a permit removed from the site.

Mr. Carabetta said that he was told by the State Inspector that they cannot do that. Attorney Donahue asked if he has a written decision from the State Inspector. Mr. Carabetta said he does not he has a verbal from the State Inspector, Harold Leaming from the meeting he had with him the other day. Attorney Donahue said that he has no idea who he is or what his experience is and what the basis for his decision is since there is nothing in writing from him to what he is speaking about. He said a permit is required before a building is to be started and if the Inspector is saying that is not the case then he would suggest that someone in the town should request a written statement as to what the requirements are that the town is supposed to follow because that is his understanding of the law. Mr. Carabetta said that they do have those things in place but they are not being followed and for whatever reason he is not sure why. Attorney Donahue said wouldn't the person present at the meeting to explain the situation to the Board be the Building Commissioner. Mr. Carabetta said yes it would but as Mr. Gorman said they don't need to explain anything to the Board anymore. Attorney

Donahue said that he heard Mr. Gorman say that he shouldn't be the one present and he thought it should be the Building Commissioner present not him. He said then the question is it is a matter of interpretation and under State Law the Building Commissioner is the interpreter of the local zoning requirements and if he has made an interpretation that the Board or individual members of the Board are at odds with then he thinks someone should try and talk with him to try and adjust how it's going to play out going forward to determine if they agree with his interpretation. He said if they disagree with his interpretation then they need to take an appeal of the action to the Zoning Board of Appeals if that is the appropriate revenue or the district of Housing Court depending on the status of the situation. Attorney Donahue said when a definitive subdivision plan is approved by the Planning Board that sets building envelopes that is if a building is going to be constructed outside of the building envelopes intentionally then there needs to be an amendment to the subdivision plan approved by the Planning Board. Mr. Carabetta said that was their thought and that was their basis for the meeting and thanked Attorney Donahue for his time.

Mr. Page said that he doesn't know where that leaves Mr. Granger. Attorney Donahue said that leaves him to go and get a permit for the foundation from the Building Commissioner. He said then the Building Commissioner has to certify that the foundation is in a location and is in compliance with the existing requirements of the zoning by-law. Attorney Donahue said if he refuses that then the Board has to determine if they are appeal to say he is wrong and whether they are going to take some type of action.

Ms. Macdonald asked if it mattered that inspections have been done on the foundation. Attorney Donahue said that he doesn't have any more information other than what has been presented to him by the Board and can't answer any of those questions.

Mr. Granger said that he will go to the Building Commissioner the next morning and thanked the Board.

Graziano Gardens

Mr. Carabetta expressed that he didn't want to discuss it because he has been told by the Selectmen that the Board is wrong and asked the members if they wanted to discuss it. The Board agreed with Mr. Carabetta they also did not want to discuss it.

Request for Waiver of Site Plan – Arment Farm, 5 Albano Drive

Acting Clerk, Alessandro Meccia read a Request for Waiver of Site Plan Review from William Arment, Arment Farm to operate an office for his farm business in his home at 5 Albano Drive. Mr. Arment and Ms. Heather Logue will be the only employees and reside in the house and the office is for the operation of a family farm.

Upon motion duly made by George Kingston and seconded Alessandro Meccia, the Board voted unanimously 4-0 to approve the Request of Waiver of Site Plan Review for Arment Farm, 5 Albano Drive. The office is not to occupy any more than 20% of the total floor area of the dwelling, including the basement area. If there are any changes in the operation, the applicant must appear before the Planning Board again to discuss those changes.

Request for Waiver of Site Plan – AJS Appraisal Group, 137 Allen Street

Acting Clerk, Alessandro Meccia read a Request for Waiver of Site Plan Review from Anthony Santaniello, AJS Appraisal Group to operate an office for his appraisal business at this location and Mr. Santaniello will be the only employee and he resides at the location. There will be no commercial vehicles on site, no storage of materials or equipment and all services are done on line.

Upon motion duly made by Alessandro Meccia and seconded by Ralph Page, the Board voted 4-0 to approve the Request of Waiver of Site Plan Review for AJS Appraisal Group, 137 Allen Street conditioned on there being no retail operation at the location, no employees other than the owner, no clients going to this site and no signage. The office is not to occupy any more than 20% of the total floor area of the dwelling, including the basement area. If there are any changes in the operation, the applicant must appear before the Planning Board again to discuss those changes.

Request for Waiver of Site Plan Review – Doctors Doctors, LLC, 604 North Main Street

Clerk, Tyde Richards read a request for Waiver of Site Plan Review from Foiasack Akereyeri, Doctors Doctors, LLC Foiasack Akereyeri to operate a medical staffing office for the Sonic Urgent Care in an existing location at 604 North Main Street. The proposed hours of operation are Monday through Saturday from 8:00 a.m. to 8:00 p.m. and there will be 10 employees depending on the season.

Upon motion duly made by Alessandro Meccia and seconded by Ralph Page, the Board voted 4-0 to approve the Request for Waiver of Site Plan Review for Doctors Doctors, LLC, 604 North Main Street.

Request for Signage – Sonic Care, 604 North Main Street

Acting Clerk, Alessandro Meccia read a Request for Signage from Osazee Osague Sonic Urgent Care, PLLC, 604 North Main Street.

Upon motion duly made by Ralph Page and seconded by Alessandro Meccia, the Board voted 4-0 to approve the building sign for Sonic Urgent Care measuring 15.75" x 16.05' for a total of 21.07 square feet to be placed on the building as shown on the sign rendering submitted by the applicant and conditioned upon obtaining a sign permit from the Building Inspector.

Ninety Nine renovation

Ms. Macdonald said that she has been in contact with the developer of Ninety Nine Restaurant who was looking to make changes to the inside of their building, painting the exterior, installation of new awnings. Interior work will be interiors walls, replacement of carpets, refurbishment of existing booths, removal of booths in the center portion of the dinning room replacing them with free standing tables & chairs, raise the drop ceiling. She said when she first received notification about a month ago they were looking for a 190 seats. Mr. Carabetta asked how many seats do they have currently. Ms. Macdonald said that they have 188 seats and they were approved for a 160. Mr. Carabetta said now they want more. Ms. Macdonald said that she explained to them that they are going to need more parking and there really is no place to add spaces. She said at the time of their first approval the Planning Board told them that they didn't have enough spaces at their restaurant area but if they add more in the shopping center they would consider that. Ms. Macdonald said somewhere down the

line they added seats to 188 and never came before the Planning Board. She said that they were not under Special Permit because they were established prior to 1999 when the by-law went into effect for restaurants. She said by adding those seats from 160 to 188 they would have needed to apply for a Special Permit and they probably would have been denied because there is not enough room for more parking. Ms. Macdonald said when she explained that to Bob Botto of Woburn she told him that they have already exceeded the amount of seats that the Planning Board has allowed and there is just no parking for the additional ones. She told him that he was free to apply for a Special Permit and the Planning Board would get involved only because of the seating and the parking. Ms. Macdonald said that Mr. Botto said that he is not going to increase the seating and to keep it what it is currently and she told him if he kept it where it is then there was no need for a Special Permit because he is not increasing what he already has. Mr. Carabetta said that they don't need to bring him in for the interior remodeling either because it is not under the Planning Boards purview. Ms. Macdonald said that she reiterated that in a letter to him that the number of seats approved where 160 and he said that there is actually 188 and she told him that she would bring that to the Board's attention. She said the fact that they are not increasing the number of seats it was her opinion that he would not need to file for Special Permit unless the board is going to require one for the additional 28 seats that exist now. The Board agreed that was satisfactory to them.

ANR Language

Mr. Carabetta said that he met with Larry Levine and they went over the issues and he understands and is trying to get the surveyors to put things that are missing on the plans. He said for whatever reason he thinks things have been become lax over the years. Mr. Page said what they mean about ANR language is language that is required on all plans. He said the only thing it states is that by endorsing it the approval is no guarantee that it meets the area requirement of the zoning lot. Mr. Page said that it doesn't have to but that doesn't go to other possible zoning violations. He said that they can't look at that when they do an ANR but they could change the language that's on there to something such as "endorsement is not a determination of conformance with zoning regulations".

Mr. Carabetta said he thinks it was before Mr. Page was on the Board they did go through it and there were some court cases that showed some of that language on the plans where the Planning Board could put that language on the plans to protect the town, protect themselves and protect the applicant. He said maybe it needs to be heard again and he does have the court cases at home and maybe it is something they need to look at as far as putting in their ANR handbook. Ms. Macdonald said that it is in the ANR handbook. Mr. Page said all he is asking for is a changing in the wording that comes up on the plans instead of it being solely for area requirements that have a general saying they are not endorsing it for zoning violations. Upon motion duly made by George Kingston and seconded by Alessandro Meccia, the Board voted 4-0 to add the following language to the ANR application "No determination of compliance with zoning requirements has been made or intended".

Discussion regarding failure of Building Inspector addressing zoning complaints

Mr. Kingston said that he hand delivered three zoning violations complaints to the Zoning Enforcement Officer on June 23rd and July 2nd will be 14 days from the time they were submitted to him. He said that the signs are still up and there has been no action as far as he knows and he has not received a report. Mr. Kingston said that he doesn't anticipate receiving a report by tomorrow and the next step would be to appeal to the Zoning Board of Appeals. He said that two of the zoning

violations are right outside of Town Hall, one across the street at the Rug Store and the other is at Sleepy's. He said when he handed them to the Building Inspector he said that those signs would be down the next day and that was 2 weeks ago. Mr. Kingston said that the third one is on Ramona's Way where a 6 to 8 feet 100% solid fence has been erected and not conforming to the requirements for setback and he doesn't know if a building permit has been issued. He said that he thinks they need to choose something to appeal so that they can make clear that they are not going to ignore those things and if they don't appeal then they will have to stop issuing complaints because nothing is ever going to get done. Mr. Kingston asked the Board what their thoughts were on appealing it.

Mr. Carabetta said that there have been 40+ complaints and asked Mr. Page if he knew how many of them have been resolved. Mr. Page referred to this notes and said that they are all being looked at again at per Chairman of the Board of Selectmen. Ms. Macdonald said that the Planning Board was to have received copies of the responses and they have received none and that was almost a month ago.

Mr. Meccia said out of all those complaints there is not many that are the Planning Boards and there are only a few Special Permits violations. Mr. Kingston said the rest of them are zoning violations and the Planning Board has interest in having the zoning by-law enforced and as a Board with an interest they can appeal. After further discussion the Board members felt as though it was useless without enforcement.

Wisteria Lane subdivision complaint

Mr. Carabetta said that a complaint was received via e-mail from Mr. Montessi about the heavy rains 2 to 3 weeks ago and his concerns were that his septic tank was going to fill up and float away and his driveway was going to wash away, his garden was going to wash away. He said that he met with Al Joyce at the site and he has since put a stone swale in to slow down the water, he has reinstalled the silt fence that has washed out and has planted grass and has taken the gutters off the house and redirected the water to send more water towards the storm management system and/or catch basins to lessen the impact towards the Montessi's. Mr. Carabetta said that Mr. Joyce has done everything the Board has asked of him and he has done actually more than what the Board has asked from him. He said that the property always went that way and with the subdivision road being changed less water is going that way. Mr. Carabetta said trees have been cut during construction and there have been a couple of heavy rain events but the developer has cleaned it up, has fixed and has remedied the situation and he doesn't know if the Montessi's will be happy with those things that have been done.

He said as far as that goes he doesn't know what else they can do to satisfy the Montessi's because Mr. Joyce has done everything to remedy the situation. Mr. Kingston said that he has walked the property and it is wet and thinks the builder has done an excellent job in water management. He feels if the Montessi's really believe that the developer is damaging them they have a right to sue him in court for damages.

Mr. Page said that on the plans it does show a berm being installed on Somers Road and it has not been installed as of yet. Mr. Carabetta said that he will address that with the developer. Ms. Macdonald said that DPW did put a camel back at their driveway but that was the extent of the work that DPW was going to do. She said they were the ones during a round table that had said to Mr. Joyce if he put in a berm he would extend it down and that is why it was on the definitive subdivision

plan. Mr. Carabetta asked if he has the right to extend the property even if it isn't his. Ms. Macdonald said that she would have to look at the plan again and it may not go past his property. Mr. Carabetta said that is what he would like checked because if it does stop short there is still going to be some runoff. Mr. Page said definitive subdivision plans were approved for Wisteria Lane and everything on those plans have been installed according to the plans. Ms. Macdonald said other than curbing. Mr. Page said as far as elevations, the roadway and Bob Peirent has gone out and looked at it and so far as the subdivision has gone along he has kept to those plans. He said on top of that Mr. Joyce has added other things that have been suggested such as the stone. Ms. Macdonald said that he changed the roof drainage to a different direction. Mr. Page said that was not something that the Board required him to do that is something he is doing on his own. He said that he knows that property is wet and it is going to be wet. Mr. Page said he thinks once the grass is in it is going to alleviate 99.9% of the problems going forward. Mr. Carabetta said that he thinks in the end it will be less because it will cut the water in half if not more. He said that he will look at the plan and discuss it with Mr. Joyce and maybe have Mr. Peirent get involved because if there is another 40 or 50 feet Mr. Joyce is not responsible for then he will see if the town can do something about it.

Minutes

The Board reviewed the minutes of April 22, 2014 and upon motion duly made by Alessandro Meccia and seconded by Ralph Page, the Board voted 4-0 to approve.

There being no further business and upon motion duly made by George Kingston and seconded by Ralph Page, the Board voted 4-0 to adjourn at 7:45 p.m.

For the Board,

Alessandro Meccia, Acting Clerk